IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Bail Appl..No. 4380 of 2007()

[CRIME NO.97/2004 OF EXCISE CIRCLE OFFICE, KUNNATHOOR]

PETITIONER/ACCUSED

VIJAYAKUMAR.R, S/O RAMAKRISHNA PILLAI,
AGED 41 YEARS, PUTHIYA VEEDU, AYITHOTTUVA,
WEST KALLADA P.O., KOLLAM.

BY ADV. SRI.DILEEP P.PILLAI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4380 of 2007

Dated this the 19th day of July 2007

O R D E R

Application for anticipatory bail. The petitioner was allegedly found to be in possession of 10 litres of arrack on 31/8/2004. Crime was registered. Investigation is complete. Final report has already been filed. Committal proceedings has been registered before the learned Magistrate. The petitioner apprehends arrest in execution of coercive processes issued by the learned Magistrate.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He prays that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The application is opposed by the learned Public Prosecutor. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor. I have considered all the relevant inputs. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007